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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/713,141      | 11/13/2003  | Giuliano Cacucci     | 2835-73803          | 9555             |

23643 7590 04/07/2006

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11 SOUTH MERIDIAN  
INDIANAPOLIS, IN 46204

EXAMINER

PAPE, JOSEPH

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3612

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/713,141

Applicant(s)

CACUCCI ET AL.

Examiner

Joseph D. Pape

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 18,20,23 and 25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 31 is/are allowed.
- 6) ☒ Claim(s) 1-15 and 29 is/are rejected.
- 7) ☒ Claim(s) 16,17,19,21,24,26-28 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 18, 20, 23, and 25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected 10/1/04, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/1/04.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

3. Claims 1-6, 8-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Abels et al. 2001/0017462.

Abels et al. '462 discloses the claimed invention including safety barrier 4 which moves from a stowed position to a deployed position. The barrier can be locked as shown in Figure 5 and can be opened manually but is closable with the assistance of a mechanical device comprising a spring (see column 3, lines 21-25.

Re claim 10, by opening the barrier and letting go the occupant has essentially "activated" the spring device.

Re claim 12, the spring device is considered to be a "retractor" as broadly as recited.

4. Claims 1-8, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Phillips.

Phillips discloses the claimed invention including a safety barrier comprising net 11 which can be stowed or extended. When the door is in the open position, the net barrier is the only structure that impedes an occupant's egress through the exit. The barrier includes a lock 42.

The door of Phillips is considered to provide access to the cab of the vehicle and thus is considered to comprise a cab open exit as broadly as recited.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the

various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 9-15 and 29, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Phillips in view of Lichy.

Phillips discloses the claimed invention except for the barrier including a motor for deployment.

Lichy discloses an opening barrier selectively received on a roller which includes a motor drive (Figure 1) and an inherent control system therefor.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the roller system with spring retractor of Phillips with a motor drive for deployment as taught by Lichy as an alternate automated control for greater ease of use.

***Allowable Subject Matter***

7. Claims 16-17, 19, 21, 22, 24 26-28, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 31 is allowed.

***Response to Arguments***

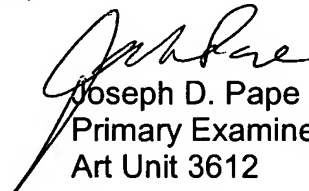
9. Applicant's arguments filed 1/26/06 have been fully considered but they are not persuasive. See additional rejections and comments above.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Pape whose telephone number is (571)272-6664. The examiner can normally be reached on Tuesday-Friday 6:30 AM-3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on (571)-272-6659.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Joseph D. Pape 3/31/06  
Primary Examiner  
Art Unit 3612

Jdp

3/31/06